IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4040 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAVALBEN BADAJI THAKOR W/O BADAJI MANAJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4040 of 2001

MR PUSHPADATTA VYAS for Petitioner No. 1

MRS HANSABEN PUNANI, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/12/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 25-5-2001 passed by the

District Magistrate, Mehsana and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, last offence registered against the detenu was on 16-4-2001 at Visnagar Police Station Prohi.C.R.No.172 of 2001 whereas the order of detention was passed on 25-5-2001 based on this offence and hence, there is a delay in passing the detention order. He has submitted that page Nos.138 and 138 which have been supplied by the detaining authority along with the grounds of detention reveal that cancellation of bail application has been filed by Police Sub-Inspector, Visnagar Police Station on 3-5-2001 but same has not been reflected in the order passed by the authority for which Mr.Pushpadatta Vyas has drawn my attention towards para 5 of the grounds of detention. It appears that no affidavit has been filed by the authorities justifying the action taken by the detaining authority and learned AGP is not in a position to satisfy this Court. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since no affidavit has been filed either by the detaining authority or by the State authority justifying satisfactorily the action taken by the authorities, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 25-5-2001 passed against the detenu is hereby quashed and set aside. The detenu Badaji Manaji Thakor is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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